

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOE TOMAS COKER,	)	CASE NO. C06-0068-JLR
	)	
Plaintiff,	)	
	)	
v.	)	REPORT & RECOMMENDATION
	)	
CHRISTINE GREGOIRE, et al.,	)	
	)	
Defendants.	)	
_____	)	

INTRODUCTION

Petitioner is a state prisoner who has filed a civil rights complaint under 42 U.S.C. § 1983. The complaint has not been served on defendants. For the reasons below, the Court recommends construing a recent letter from plaintiff as a motion to voluntarily dismiss this action, and granting the motion.

PROCEDURAL HISTORY

On January 17, 2006, plaintiff submitted a civil rights complaint along with an application for leave to proceed *in forma pauperis*. (Doc. #1). The Court granted the application but declined to serve the complaint on defendants because the basis of the complaint was unclear. (Doc. #10). Plaintiff was granted leave to amend the complaint, and was given 30 days in which to file an amended complaint. (*Id.*)

01 Plaintiff wrote the Court a letter requesting more time to file an amended complaint and  
02 the Court granted an extension of time until May 1, 2006. (Doc. #13). On April 24, 2006,  
03 plaintiff wrote to the Court again and this time announced that he would not be able to meet the  
04 deadline because he had learned that his legal materials had been destroyed by the Department of  
05 Corrections. (Doc. #15). Plaintiff further stated that he would need approximately 18 months to  
06 reassemble all the materials which were destroyed. (Doc. #15 at 1).

07 DISCUSSION

08 Due to case management concerns, the Court cannot grant plaintiff an extension of 18  
09 months' duration. Therefore, the only alternative appears to be to allow plaintiff to voluntarily  
10 dismiss this lawsuit now and refile it later when he has obtained the necessary documents.  
11 Accordingly, the Court recommends construing plaintiff's letter as a motion for voluntary  
12 dismissal of this action under Fed. R. Civ. P. 41(a)(1). So construed, the motion should be  
13 granted.

14 Plaintiff also writes in his letter that had he known his documents had been destroyed, he  
15 would not have filed his complaint and incurred the financial obligation of repaying the \$250 filing  
16 fee, as he is required to do under the previous Order granting him leave to proceed *in forma*  
17 *pauperis*. (Doc. #6). Because circumstances beyond plaintiff's control have prevented him from  
18 continuing to litigate this matter, the Court recommends that, in the interest of justice, plaintiff  
19 should not be required to pay the remaining portion of the \$250 filing fee imposed by the previous  
20 Order. To relieve plaintiff of this financial burden, the previous Order granting him *in forma*  
21 *pauperis* status should be vacated.

22 ///

CONCLUSION

For the foregoing reasons, the court recommends granting plaintiff's motion to voluntarily dismiss this action and vacating the previous Order granting plaintiff leave to proceed *in forma pauperis*. A proposed Order is attached.

DATED this 28th day of April, 2006.



Mary Alice Theiler  
United States Magistrate Judge